

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Western Division of Survey and Certification
San Francisco Regional Office
90 7th Street, Suite 5-300 (5W)
San Francisco, CA 94103-6707



Refer to: WDSC-YP

**[Receipt Of This Notice Is Presumed To Be September 3, 2019 - Date Notice Faxed]
Important Notice - Please Read Carefully**

**Faxed to: (415) 759-2374 and
Emailed to: Maggie.rykowski@sfdph.org**

September 3, 2019

CMS Certification Number: 55-5020

Margaret Rykowski, Acting Executive Administrator
Laguna Honda Hospital & Rehabilitation Center DP SNF
375 Laguna Honda Blvd.
San Francisco, CA 94116

**Subject: Imposition of Remedies
Enforcement Cycle Start Date: July 12, 2019 Complaint Survey**

Dear Ms. Rykowski:

On July 12, 2019, the California Department of Public Health (State Survey Agency) completed a complaint survey of your facility, Laguna Honda Hospital & Rehabilitation Center DP SNF, in which it was determined that your facility was not in substantial compliance with Federal requirements for nursing homes participating in the Medicare and/or Medicaid programs. See 42 C.F.R. Part 483. Indeed, these survey findings documented that the cited deficiencies posed immediate jeopardy to residents' health and safety of which the facility was notified on July 11, 2019 at 3:40 pm. The immediate jeopardy was determined to be subsequently abated on July 12, 2019 at 6:36 pm. Furthermore, the July 12, 2019 survey also documented that your facility provided "substandard quality of care" as that term is defined in 42 C.F.R. §488.301.

As a result of the July 12, 2019 survey findings, which were listed on a Statement of Deficiencies (Form CMS-2567) that was forwarded to you after the survey, the State Survey Agency notified you that it would recommend to the Centers for Medicare & Medicaid Services (CMS) that certain remedies be imposed.

CMS's Approval of Certification/Finding of Noncompliance

Having reviewed the July 12, 2019 survey findings and the State Survey Agency's recommendations, this office has concluded that we concur with the survey findings documented during the survey (and listed on the above-referenced Form CMS-2567 for that survey).

Accordingly, this office has approved a certification/finding of noncompliance based on our conclusion that Laguna Honda Hospital & Rehabilitation Center DP SNF was not in substantial compliance with nursing home participation requirements at 42 C.F.R. Part 483 as documented by the survey completed on July 12, 2019 (and set forth in the referenced Form CMS-2567, the contents of which are incorporated herein by reference).

CMS's Imposition of Remedies

Based upon this certification/finding of noncompliance, we have determined, in accordance with sections 1819(h) and 1919(h) of the Social Security Act and the enforcement regulations at 42 C.F.R. Part 488 to impose the following remedies:

[X] Civil money penalty [42 C.F.R. § 488.430] in the amount of \$6,740.00 per day beginning on February 6, 2019 through July 11, 2019 and totaled \$1,051,440.00 for the 156 days that immediate jeopardy to residents' health and safety existed; and continuing at the reduced amount of \$1,285.00 per day effective July 12, 2019 and continuing each day thereafter until further notice from CMS.

[X] Denial of payment for new admissions [42 C.F.R. § 488.417(a)], effective September 18, 2019.

The denial of payment for new admissions and the civil money penalty at \$1,285.00 per day will continue in effect until CMS either (1) determines that your facility is in substantial compliance with the applicable participation requirements or (2) terminates your facility's Medicare provider agreement. 42 C.F.R. 488.454. The daily rate of the \$1,285.00 per day civil money penalty could, however, be increased (or decreased) based on the results of any subsequent surveys.

Though the immediate jeopardy was removed on July 12, 2019, your facility remains out of "substantial compliance" as that term is defined at 42 C.F.R. § 488.301 as evidenced by the deficiencies documented on the above-referenced Statement of Deficiencies. As you have been informed by the State Survey Agency, all of those deficiencies (including the deficiencies previously noted as immediate jeopardy) must be promptly corrected, and Laguna Honda Hospital & Rehabilitation Center DP SNF must otherwise attain and maintain substantial compliance with all applicable participation requirements at 42 C.F.R. Part 483. Absent such prompt action by your facility, further remedial action (including possible termination of your provider agreement) will be taken by this office.

In this regard (as discussed more fully below), CMS will terminate your facility's Medicare provider agreement if substantial compliance with Medicare participation requirements is not promptly achieved and maintained. If such substantial compliance is not achieved and maintained, you will be informed by future notice of the exact date of termination. You are reminded that Congress has mandated that under no circumstances will termination of a facility be effective later than six months from the last day of the survey documenting the facility's failure to be in substantial compliance. See 42 C.F.R. § 488.412(d). In this case, the first survey documenting your facility's failure to be in substantial compliance was completed on July 12, 2019. Therefore, under no circumstances will the termination be effective later

than **January 12, 2020**. It is emphasized, however, that the termination date may be implemented sooner (after proper notice).

More particularly, you have been informed by the State Survey Agency that you must promptly submit an allegation of compliance and an acceptable plan of correction addressing each of the cited deficiencies on the latest Form CMS-2567. If this is timely submitted, and it is determined that the information provided credibly establishes that you have taken action to correct all of the identified deficiencies, a revisit of your facility will be scheduled to determine whether the facility has achieved substantial compliance with the controlling participation requirements at 42 C.F.R. Part 483. If acceptable documentation of corrective action is not timely submitted (as described above), or if timely submitted but a revisit survey documents a continued failure to be in substantial compliance, this office will expeditiously proceed to terminate your Medicare provider agreement. If this should occur, you will receive a further detailed notice identifying the date of termination and your respective appeal rights.

CMP Financial Hardship Request

If you are of the opinion that there is information concerning your financial status that we should consider, you have the opportunity to submit such information within fifteen (15) calendar days of receipt of this notice. (Because this notice is being sent to you by facsimile on the date indicated above, we consider the date the notice is transmitted as the date of receipt. Therefore, you must submit the information listed below within fifteen (15) calendar days of the date of this notice.) If the information listed below is timely received by this office, we will thoroughly review your submittal and determine whether there is a basis for revising the amount of the civil money penalty that is being imposed.

- Written, dated request specifying the reason(s) financial hardship is alleged;
- Brief summary listing the supporting documents that are being submitted;
- Current balance sheet;
- Current income statements;
- Current cash flow statements;
- Most recent full year audited financial statements prepared by an independent accounting firm (including footnotes);
- Most recent full year audited financial statements of the home office and/or related entities (including footnotes);
- Disclosure of expenses and amounts paid/accrued to the home office and/or related entities;
- Schedule showing amounts due to/from related companies, or individuals, included in the balance sheets. The schedule should list the names of related organizations, or persons, and indicate where the amounts appear on the balance sheet (e.g., Accounts Receivable, Notes Receivable, etc.); and
- If the nursing home requests an extended payment schedule of more than twelve (12) months duration, the provider must submit a letter from a financial institution denying the provider's loan request for the amount of the CMP. This does not apply to CMPs to be held in escrow.

Please email your financial hardship request along with your supporting financial documentation by September 18, 2019 to: Yvonne.pon@cms.hhs.gov

Denial of Approval of Nurse Aide Training

Please note that, under certain specified circumstances, sections 1819(f)(2)(B) and 1919(f)(2)(B) of the Social Security Act, 42 U.S.C. §§ 1395i-3(f)(2)(B) and 1396r(f)(2)(B), require withdrawal of approval of nurse aide training and competency evaluation programs and nurse aide competency evaluation programs offered by or in a facility. See 42 C.F.R. § 483.151(e)(1). As a result of the imposition (as noticed herein) of the denial of payment for new admissions, civil money penalty, and finding of substandard quality of care, this provision is applicable to your facility. You will receive further details about the denial of approval of nurse aide training from the State. In light of the foregoing, you may finish any nurse assistant training class you are presently conducting; you may not, however, start another such class. **Please contact Suzanna Nye, Chief, Training Program Review Unit, Aide and Technician Certification Section, California Department of Public Health at (916) 552-8634 for more information.**

Appeal Rights

If you disagree with our certification/finding of noncompliance that is based upon our determination that Laguna Honda Hospital & Rehabilitation Center DP SNF was not in substantial compliance with controlling Medicare participation requirements at 42 C.F.R. Part 483 as documented during the survey completed on July 12, 2019, you or your legal representative may request a hearing before an administrative law judge of the Department of Health and Human Services' Departmental Appeals Board since this certification/finding of noncompliance has led to the actual imposition of an enforcement remedy specified at 42 C.F.R. § 488.406. You may appeal the certification/finding of noncompliance which led to an enforcement action, but you cannot appeal the enforcement remedy itself. See 42 C.F.R. § 488.408(g). Procedures governing this process are set out in 42 C.F.R. Part 498, Subpart D. A request for a hearing should be filed **electronically** no later than **sixty (60) calendar days** from the date of receipt of this notice. (We remind you that, as indicated above, since this notice is being sent to you by facsimile, your appeal must be filed no later than sixty (60) days from the date indicated on this notice.) See 42 C.F.R. 498.40(a)(2).

You can file your appeal electronically at the Departmental Appeals Board Electronic Filing System Web site (DAB E-File) at <https://dab.efile.hhs.gov>. To file a new appeal using DAB E-File, you first need to register a new account by: (1) clicking **Register** on the DAB E-File home page; (2) entering the information requested on the "Register New Account" form; and (3) clicking **Register Account** at the bottom of the form. If you have more than one representative, each representative must register separately to use DAB E-File on your behalf.

The e-mail address and password provided during registration must be entered on the login screen at https://dab.efile.hhs.gov/user_sessions/new to access DAB E-File. A registered user's access to DAB E-File is restricted to the appeals for which he or she is a party or authorized representative. Once registered, you may file your appeal by:

- Clicking the **File New Appeal** link on the Manage Existing Appeals screen, then clicking Civil Remedies Division on the File New Appeal screen.

And,

- Entering and uploading the requested information and documents on the "File New Appeal-Civil Remedies Division" form.

At minimum, the Civil Remedies Division (CRD) requires a party to file a signed request for hearing and the underlying notice letter from CMS that sets forth the action taken and the party's appeal rights. All documents must be submitted in Portable Document Format ("PDF"). Any document, including a request for hearing, will be deemed to have been filed on a given day, if it is uploaded to DAB E-File on or before 11:59 p.m. ET of that day. A party that files a request for hearing via DAB E-File will be deemed to have consented to accept electronic service of appeal-related documents that CMS files, or CRD issues on behalf of the Administrative Law Judge, via DAB E-File. Correspondingly, CMS will also be deemed to have consented to electronic service. More detailed instructions on DAB E-File for CRD cases can be found by clicking the CRD E-File Procedures link on the File New Appeal Screen for CRD appeals.

If you do not have the ability to file your appeal electronically, you may file it in writing, but must provide an explanation as to why you cannot file submissions electronically and request a waiver from e-filing in the mailed copy of your request for a hearing. Written request for appeals must also be filed no later than sixty (60) calendar days from the date you receive this notice, and must be submitted to the following address:

Department of Health and Human Services
Departmental Appeals Board, MS 6132
Civil Remedies Division
330 Independence Ave, SW
Cohen Building, Room G-644
Washington, D.C. 20201

If you choose to file your appeal to the Departmental Appeals Board, please also email a courtesy copy of your hearing request (excluding exhibits and attachments) to the San Francisco Regional Office using the following e-mail address at: ROSFEnforcements@cms.hhs.gov

It is emphasized that a request for a hearing must identify the specific issues, and the findings of fact and conclusions of law with which you disagree. It must also specify the basis for contending that the findings and conclusions are incorrect. See 42 C.F.R. § 498.40(b). If a hearing request does not fully comport with the timing and specificity requirements of 42 C.F.R. § 498.40, CMS may move, as appropriate, for summary judgment on certain issues and/or dismissal of your entire filing.

If your hearing request is not dismissed you will have an opportunity to present evidence and further argument at an in-person hearing or on the record, where you may be represented by counsel at your own expense.

Details Regarding the Civil Money Penalty

In lieu of requesting a hearing to challenge the certification/finding of noncompliance noticed herein (that is, the certification/finding of noncompliance based on the determination that Laguna Honda Hospital & Rehabilitation Center DP SNF was not in substantial compliance with controlling Medicare participation requirements at 42 C.F.R. Part 483 as documented during the survey completed on July 12, 2019), you may choose to waive your right to such a hearing. A decision to exercise this waiver option must be made in writing within sixty (60) calendar days from the date of this notice even though, as discussed above, the total amount of the accrued civil money penalty (based on the certification/finding of noncompliance resulting from the July 12, 2019 survey) will not be determined until a later date. See 42 C.F.R. § 488.436. **A decision to exercise this waiver option must be made in writing on your**

company letterhead within sixty (60) calendar days from the date of this notice (which is being sent to you *via* facsimile). See 42 C.F.R. 488.436. Please note that your CMP waiver along with a copy of this notice must be electronically submitted directly to our CMS San Francisco Regional Office using the following e-mail address at:

ROSFEnforcements@cms.hhs.gov

Such a waiver of your hearing rights would constitute an acceptance of this office's determination that your facility was not in substantial compliance as documented during the survey completed on July 12, 2019; and an acceptance of all enforcement remedies under 42 C.F.R. 488.406 resulting from the certification/finding of noncompliance not being challenged (i.e., the certification/finding of noncompliance based on the July 12, 2019 survey). By your waiver, therefore, you would accept all of the enforcement remedies that are being imposed by this office as a result of our determination that your facility was not in substantial compliance with 42 C.F.R. Part 483 participation requirements as documented during the survey completed on July 12, 2019. **The total amount of the affected civil money penalty, however, would be reduced by thirty-five percent (35%) in accordance with 42 C.F.R. § 488.436(b).**

Finally, you are reminded that you will be notified of the total amount due with regard to the civil money penalty being imposed herein when CMS: (1) determines that you have achieved substantial compliance with the applicable participation requirements; or (2) terminates your facility's Medicare provider agreement. However, a distinct portion of the civil money penalty could be identified at an earlier date as thereafter due and payable if (prior to CMS determining that you have achieved substantial compliance or prior to termination) a further survey documents that you continue not to be in substantial compliance and you have not timely appealed or timely waived your right to appeal the certification/finding of noncompliance upon which the current civil money penalty is based.

In this regard, the finding of noncompliance upon which the civil money penalty is presently founded is the determination that Laguna Honda Hospital & Rehabilitation Center DP SNF was not in substantial compliance with the participation requirements at 42 C.F.R. Part 483, as documented during the survey completed on July 12, 2019. You will receive an appropriate notice from CMS regarding any subsequent findings of noncompliance that are relevant to the continued imposition of this civil money penalty.

Independent Informal Dispute Resolution (Independent IDR)

Because a civil money penalty was imposed for the July 12, 2019 survey, the civil money penalty will be subject to the combined civil money penalty collection and escrow provisions and Independent IDR process set forth in 42 C.F.R. § 488.431. We are authorized pursuant to 42 C.F.R. § 488.431(b) to collect your CMP and place it in an escrow account on the earlier of the following dates: 1) the date on which the Independent IDR process is complete or 2) 90 days from the date of this notice. During the Independent IDR process a facility may dispute the factual basis of the cited deficiencies for which it requested Independent IDR. You may also contest scope and severity assessments for deficiencies which resulted in a finding of substandard quality of care (SQC) or immediate jeopardy.

You are required to send your written request for an Independent IDR, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which been found to constitute SQC or immediate jeopardy) to:

Diana Marana
District Manager for the San Francisco District Office
California Department of Public Health
150 North Hill Drive, Suite 22
Brisbane, CA 94005
Telephone: (415) 330-6353

Please include a copy of this CMS notice with your written request for an Independent IDR.

This request must be sent within 10 calendar days of receipt of this CMS notice. A request for an Independent IDR process will not delay the effective date of any enforcement remedy imposed on your facility, and it will not delay our collection of your facility's CMP for more than ninety (90) days.

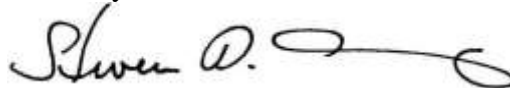
Please note further that an incomplete IDR or Independent IDR process will not delay any deadline listed above under "Appeal Rights" for requesting a hearing, or under "Details Regarding the Civil Money Penalty" for requesting waiver of hearing rights.

Filing of Medicare or Medicaid Claims

Any filing of Medicare or Medicaid claims for new admissions during the period that a denial of payment for new admissions (DPNA) is in effect could result in such claims being considered "false" claims under applicable Federal statutes, thereby potentially subjecting the filing entity to a referral to the appropriate authorities and possibly to the penalties prescribed under such statutes. An exception possibly applies where a timely appeal of the controlling certification/finding of noncompliance is filed (and remains pending) under 42 C.F.R. Part 498, and where your facility has made arrangements acceptable to your Medicare and Medicaid fiscal intermediaries to submit the claim (or claims) with prominent flagging clearly indicating that the claim(s) is/are being filed not for current payment, but "under protest" and for the sole purpose of preserving a timely filing should the facility prevail on its administrative appeal under 42 C.F.R. Part 498.

If you have any questions regarding this action, you may contact Yvonne Pon of my staff at (415) 744-3710.

Sincerely,



Steven D. Chickering
Associate Regional Administrator
Western Division of Survey and Certification

cc: State Survey Agency
State Medicaid Agency
Medicare Administrative Contractor
U.S. Attorney's Office, Northern District of California